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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 5426/LA4/75. *Dated, Trivandrum, 6th August 1975.*

The Kerala Debtors (Temporary Relief) Bill, 1975 together with the Statement of Objects and Reasons the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,

Secretary,
Legislative Assembly.

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Fourth Kerala Legislative Assembly
Bill No. 230

THE KERALA DEBTORS (TEMPORARY RELIEF) BILL, 1975

A

BILL

to provide temporary relief to certain debtors in the State of Kerala

Preamble.—WHEREAS it is expedient to provide temporary relief to certain debtors in the State of Kerala;

BE it enacted in the Twenty-sixth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Debtors (Temporary Relief) Act, 1975.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(1) "agricultural land" means land used for agriculture or horticulture, not being land appurtenant to a residential building;

(2) "artisan" means a person who does not hold any agricultural land and whose principal means of livelihood is production or repair of traditional tools, implements and other articles or things used for agriculture or purposes ancillary thereto and includes a person who normally earns his livelihood by practising craft either by his own labour or by the labour of the members of his family;

(3) "creditor" shall include the heirs, legal representatives and assigns of the creditor;

(4) "debt" means any liability in cash or kind, whether secured or unsecured, due from or incurred by a debtor on or before the commencement of this Act, whether payable under a contract, or under a decree or order of any court, or otherwise, but does not include—

(a) any sum payable to—

(i) the Government of Kerala or the Government of India or the Government of any other State or Union territory in India or any local authority; or

(ii) the Reserve Bank of India or the State Bank of India or any subsidiary bank within the meaning of clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 or the Travancore Credit Bank (in liquidation) constituted under the Travancore Credit Bank Act, IV of 1113; or

(iii) a corporation owned or controlled by the Government of Kerala or the Government of any other State or Union territory in India or the Government of India or a Government company as defined in the Companies Act, 1956; or

(iv) the Tea Board constituted under the Tea Act, 1953, or the Coffee Board constituted under the Coffee Act, 1942, or the Rubber Board constituted under the Rubber Act, 1947, or the Cardamom Board constituted under the Cardamom Act, 1965; or

(v) any co-operative society, including a Land Mortgage Bank, registered or deemed to be registered under the Co-operative Societies Act for the time being in force; or

(b) any sum payable to any corresponding new bank specified in column (2) of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; or

(c) any liability arising out of a breach of trust or any tortious liability; or

(d) any liability in respect of maintenance, whether under a decree of court or otherwise; or

(e) any liability in respect of wages or remuneration due as salary or otherwise for services rendered: or

(f) any debt which represents the price of goods purchased for the purpose of trade; or

(g) any liability for which a charge is provided under sub-clause (b) of clause (4) of section 55 of the Transfer of Property Act, 1882; or

(h) any rent payable in respect of any building; or

(i) any rent or michavaram payable in respect of any land; or

(j) any debt or debts due to a widow at the commencement of this Act, provided that the value of the property owned by her at such commencement, including the

principal amount of the debt or debts so due, does not exceed ten thousand rupees.

Explanation.—For the purposes of this sub-clause, the house in which the widow lives, her wearing apparel or similar personal belongings shall not be regarded as property; or

(k) any liability incurred or arising under a chitty or kuri which is registered or licensed under the Travancore Chitties Act, 1120, or the Cochin Kuries Act VII of 1107, or conducted under any chit fund scheme, and which has not terminated one year before the commencement of this Act:

Provided that nothing in this sub-clause shall apply to the liability of a foreman incurred or arising under any such chitty or kuri, where the foreman is a co-operative society registered or deemed to be registered under the Co-operative Societies Act for the time being in force.

Explanation.—For the purposes of this sub-clause, a chitty or kuri shall be deemed to have terminated—

(i) when the period fixed in the variola or vaimbu or kuripattika or the period as altered by a subsequent special resolution for the duration of the chitty or kuri, has expired; or

(ii) when the legal representative of a deceased foreman or the guardian of a foreman of unsound mind or the subscriber or the subscribers selected therefor fails or fail to conduct the chitty or kuri or to make suitable arrangements for the further conduct of the chitty or kuri; or

(iii) on the failure of the foreman to pay the prize amount to the subscriber within one month from the due date thereof; or

(iv) on the failure of the foreman or formen to conduct the chitty or kuri at any instalment or on any other date before the next instalment as may be agreed upon in writing by a majority of the non-prized subscribers:

Provided that if there are more foremen than one and one or more of such foremen is or are living and is or are not disqualified to conduct the chitty or kuri, the chitty or kuri shall not be deemed to have terminated if there is provision in the variola or vaimbu or kuripattika enabling the remaining foreman or foremen to conduct

the chitty or kuri or if the non-prized subscribers agree by a special resolution to the conduct of the chitty or kuri by the remaining foreman or foremen; or

(l) any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Regulation Act, 1949; or

(m) any amount due on account of any goods to a financier who financed the purchase of such goods and whose principal business is to finance the purchase of goods; or

(n) any sum advanced for the purposes of agriculture by an institution receiving financial assistance from the Agricultural Refinance Corporation established under the Agricultural Refinance Corporation Act, 1963.

Explanation I.—For the purposes of this clause,—

(i) the liability of a surety who is a debtor shall be deemed to be a debt within the meaning of this Act notwithstanding that the principal debtor is not a debtor for the purposes of this Act;

(ii) where a debt has been split up in any manner whatsoever, whether before or after the commencement of this Act, and fresh documents have been executed in respect of different portions of the debt, each such different portion shall be a debt.

Explanation II.—Where the debt is a liability in kind, the value of the commodity shall be commuted at the market rate prevailing on the date on which the debt was incurred.

(5) "debtor" means any person who has an interest, other than as a simple mortgagee, in any agricultural land in the State of Kerala, from whom any debt is due and includes—

(a) a landless labourer;

(b) an artisan; and

(c) a kudikidappukaran,

but does not include—

(i) any person assessed to sales-tax on a turnover which in the aggregate is not less than twenty thousand rupees in any two years within the three years immediately preceding the commencement of this Act, under the Kerala General Sales Tax Act, 1963, or the Central Sales Tax Act, 1956, or the law of any other State relating to sales tax;

(ii) any person assessed to income-tax under the Income-tax Act, 1961, in any two years within the three years immediately preceding the commencement of this Act and whose total income for the purposes of the said Act exceeded eight thousand rupees per annum;

(iii) any person assessed to agricultural income-tax in any two years within the three years immediately preceding the commencement of this Act, under the Agricultural Income-tax Act, 1950, or under any other law relating to agricultural income-tax, on an income exceeding eight thousand rupees per annum.

Explanation.—Notwithstanding anything contained in the Indian Evidence Act, 1872, where a creditor proves that his debtor is a person assessed to the tax mentioned in sub-clause (i) or sub-clause (ii) or sub-clause (iii) for the period or referred to in that sub-clause, the burden of proving that such debtor does not fall under the category specified in that sub-clause shall lie on the debtor;

(iv) a firm registered under the Indian Partnership Act, 1932 or a company as defined in the Companies Act, 1956, or a corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian Law.

Explanation.—For the purposes of this clause, the term "person" shall include a family, provided that sub-clauses (i) to (iii), in their application to a family consisting of not less than five members, shall have effect as if for the turnover, total income or income specified therein, twice such turnover, total income or income, as the case may be, were substituted;

(6) "family" means a Hindu undivided family or a Marumakkathayam tarward or thavazhi or an Aliyasanthana kudumba or kavaru or a Nambudiri illom;

(7) "interest" means any amount or other thing paid or payable in excess of the principal amount borrowed or pecuniary obligation incurred, or where anything has been borrowed in kind in excess of what has been so borrowed, by whatsoever name such amount or thing may be called, and whether the same is paid or payable entirely in cash or entirely in kind or partly in cash and partly in kind and whether the same is expressly mentioned or not in the document or contract, if any;

(8) "Kudikidappukaran" shall have the same meaning as in clause (25) of section 2 of the Kerala Land Reforms Act, 1963;

(9) "landless labourer" means a person who does not hold any agricultural land and whose principal means of livelihood is manual labour;

(10) "pay", with its grammatical variations, includes deliver;

(11) "principal amount" means the amount originally advanced, together with such sum, if any, as has been subsequently advanced, notwithstanding any stipulation to treat any interest as principal and notwithstanding that the debt has been renewed or included in a fresh document, whether by the same debtor or by his heirs, legal representatives or assigns or by any other person acting on his behalf or in his interest, and whether in favour of the same creditor or his heirs, legal representatives or assigns or of any other person acting on his behalf or in his interest.

3. *Bar of suits and applications and other proceedings.*—No suit for recovery of a debt shall be instituted, no application for execution of a decree in respect of a debt shall be made and no appeal, revision petition or application for review against any decree or order in any such suit or application shall be presented or made in any civil or revenue court before the expiry of one year from the commencement of this Act or such longer period as may be specified by the Government by notification in the Gazette; and all such suits, applications, appeals and petitions instituted, made or presented before such commencement and pending at such commencement shall stand stayed for the said period.

Explanation I.—In this section, the term "suit" shall not include a claim to a set-off made in a suit instituted by a debtor.

Explanation II.—For the purposes of this section, a suit in which a decree in respect of a debt is prayed for shall be deemed to be a suit for the recovery of the debt, notwithstanding that other reliefs are prayed for in such suit, and a decree shall be deemed to be a decree in respect of a debt notwithstanding that other reliefs are granted in such decree:

Provided that a suit or decree for possession of land shall not be deemed to be a suit for recovery of, or a decree in respect of, a debt by reason merely of mesne profits being also prayed for or included in such suit or decree.

Explanation III.—Nothing in this section shall debar a decree holder from enforcing reliefs other than in respect of a debt, where the decree contains independent reliefs.

4. *Presumption as to transfer of immovable property of debtor.*—(1) Every transfer of immovable property made by a debtor entitled to the benefits of section 3, made during the period

mentioned in that section shall, in any suit or other proceedings with respect to such transfer, be presumed, until the contrary is proved, to have been made with intent to defeat or delay the creditors of the transferor.

(2) Where a debtor entitled to the benefits of section 3 has in collusion with another allowed his immovable property to be sold during the period mentioned in that section through court or otherwise, with a view to defeat or delay his creditors, the sale shall be voidable at the option of any creditor so defeated or delayed.

5. *Exclusion from benefits.*—Notwithstanding anything contained in this Act, where a debtor entitled to the benefits of section 3, with intent to defeat or delay his creditor or creditors, has made any voluntary transfer of any interest in immovable property during the period mentioned in the said section, such debtor shall not be entitled to the benefits of that section.

6. *Limitation.*—In computing the period of limitation for a suit for recovery of a debt or an application for the execution of a decree in respect of a debt or an appeal, revision petition or application for review against any decree or order in any such suit or application, the time during which the institution of the suit or the making of the application or the presentation of the appeal or petition was barred under section 3 shall be excluded.

7. *Interest not to accrue in respect of debts.*—No interest shall accrue during the period mentioned in section 3 in respect of a debt due at the commencement of this Act from a debtor entitled to the benefits of section 3.

8. *Act to override other laws, contracts, etc.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) or in any other law for the time being in force, or in any custom, usage or contract, or in any decree or order of a court or other authority.

9. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made,

the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The Kerala Agriculturists' Debt Relief Act, 1970 provides relief to the indebted agriculturists in the State. The benefits conferred by the above Act are, however, available only in respect of debts incurred before 14th July, 1970 i.e., the date on which the Act came into force. Accrual of debts on a large scale by the weaker sections of the community has taken place subsequently also. It is considered necessary to provide relief in such cases.

It is also considered necessary to widen the range of beneficiaries entitled to relief, by including such categories like artisans and landless workers other than agricultural workers.

The provision of interim relief to the weaker sections of the community from the burden of debt is one of the main ingredients of the 20-Point Economic Programme.

The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill if enacted and brought into operation would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 seeks to empower the Government to extend by notification in the Gazette, the period during which suits, applications, etc., shall not lie and pending suits, applications, etc., shall stand stayed.

Clause 9 seeks to empower the Government to make rules for carrying out the purposes of the Act.

The matters with respect to which the notification may be issued and the rules may be made are of an administrative nature. The delegation of legislative power is thus of a normal character.

BABY JOHN